



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 15, 1995

Ms. Cynthia H. Carriger  
Executive Director  
Bee Community Action Agency  
P.O. Box 1540  
Beeville, Texas 78104-1540

OR95-963

Dear Ms. Carriger:

On July 31, 1995, we received your request for an open records decision under the Open Records Act, chapter 552 of the Government Code, with regard to certain records sought by Mr. Toribio M Ortiz.<sup>1</sup> Your request was assigned ID# 34985.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *But see, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request.

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<sup>1</sup>Because you have requested an open records decision from this office, we assume that the Bee Community Action Agency in fact is subject to the requirements of the Open Records Act. See Gov't Code § 552.003 (definition of "governmental body" under the Open Records Act).

Although you did not assert in your original letter to this office that any particular section of the Open Records Act excepts the requested information from required public disclosure, you stated that "[i]t is our understanding that federal regulations prohibit the release of client names (or listing of names) to comply with privacy and confidentiality laws." However, you cited no specific federal regulation or other law that makes the requested information confidential. Accordingly, on August 18, 1995, we asked you for, among other things, an explanation as to why the requested records are excepted from required public disclosure. To date you have not supplied this office with such an explanation.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Without the information requested from you, this office is unable to evaluate whether the requested records are excepted from public disclosure under section 552.021(a) of the Government Code. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code.

Unless the information is confidential by federal or other law or there exist some other compelling reason as to why the information should not be made public, the requested information is presumed to be public. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact this office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Records Division

MAR/RWP/rho

Ref.: ID# 34985

cc: Mr. Toribio M. Ortiz  
P.O. Box 2007  
Beeville, Texas 78102